

**PROPOSED LEGISLATION CONCERNING DIVESTITURE OF STATE REGULATED  
HYDROELECTRIC ASSETS AND TO CREATE  
THE CALIFORNIA HYDRO CORPORATION**

(6/3/99)

**KEY FEATURES**

**WHEREAS:**

1. California's privately owned hydropower serves many broad public interests and has contributed to the growth of the state's economy for decades. Hydropower will continue to play an important role in the state's economy, but present ownership and management structures must be revised to meet the needs of the next millenium.
2. For almost a century, private hydropower has been developed on hundreds of California's streams and rivers. Many benefits to the state's citizens have resulted. But, many consequences have also resulted in substantial damages to the state's fish and wildlife with corresponding adverse effects to those parts of the economy dependent on fish and wildlife.
3. The new millenium requires new directions and priorities for hydropower in California's economy. The new directions and priorities demand full recognition of all of the benefits and effects of hydro management. This requires ongoing involvement and management of the public in both the policies and the day-to-day management of the facilities, including:
  - Integration of operations with the many local public water supply agencies
  - Clean-up of the unfinished environmental business at each of the facilities
  - Termination and decommissioning of those facilities deemed to be either uneconomic or of small economic value relative to the environmental consequences of their continued operation as power facilities
  - More frequent examination of operations and management than provided under the very long term license arrangements with the federal government
  - More direct involvement of the state than is provided under federal regulation
4. Two of the state's largest electric utility companies presently own most of the hydropower in the state. The market power those companies or any subsequent owner could capture would adversely affect both the state's newly restructured competitive electric generation industry and the state's consumers.
5. California's ratepayers benefit from a hydro system that is cleaned-up and operates efficiently within priorities that meet contemporary state needs.

**THE ACT:**

1. The legislature reaffirms that private electric utility companies regulated by the California Public Utilities Commission (SCE/PG&E) can either:
  - a. Keep ownership their hydro assets within the regulated utility, or

- b. Sell their hydro assets to a buyer who meets the purchase criteria [any transfer of ownership, including transfer to an Affiliated Company, will be considered as a sale of the assets for purposes of Section 851]
2. If any regulated electric company elects to retain the assets within the regulated utility, the following provisions apply (amend Section 851):
  - a. in the event that the company subsequently decides to sell any or all of its hydro assets, the new amended Section 851 applies
  - b. while the company continues to own such hydro facilities, such company and such facilities will receive no special treatment and the assets shall remain regulated by the PUC as they are now
  - c. A special supervising entity will be created to supervise any such company and their hydro operations, pricing, etc., to ensure that they are not “abusing” their market power.
3. If any regulated electric company elects to sell their hydropower assets, amend Section 851 to provide:
  - a. Before any such sale is completed: all unfinished environmental business and facility decommissionings must either be done or a plan must be in place to accomplish these items within a reasonable period of time
  - b. Financing to complete the unfinished environmental business and facility decommissionings will be undertaken as transition costs eligible for cost recovery as either uneconomic or stranded costs through the CTC/TCBA (Competitive Transition Charge/Transition Cost Balancing Account)
  - c. For purposes of determining total asset value only, prior to any sale or transfer of the assets, the company must unbundle the assets to be transferred or sold to define each asset being transferred or sold as determined by the applicable FERC license (this provision would not apply if the company first offered to sell the system to, and the State then purchased the system, see below)
  - d. Facilities must be appraised in an open process with full disclosure of the data and the resulting appraisal(s); EIRs must be prepared for each asset (this provision would not apply if the company first offered to sell the system to, and the State then purchased the system, see below)
  - e. The State government retains a right of first refusal to purchase the assets at the appraised value; the assets may remain bundled only if the State subsequently purchases the assets
4. If any electric company elects not to sell its hydropower assets now, the amendments to Section 851 defining the procedural requirements and State right of first refusal would still apply at any other time the company would decide to sell the assets.

5. If the State is offered or otherwise exercises its right of first refusal to acquire the hydropower assets:
- a. a new independent State corporation would be established to own and operate the hydro assets acquired
  - b. the corporation will be governed and managed by an independent board of directors who shall be appointed as follows:
    - two members appointed by the Speaker of the Assembly, one member representing rural government interests and one member representing ratepayer interests
    - two members appointed by the President Pro Tempore of the Senate, one member representing environmental interests and one member representing water management interests
    - two members appointed by the Governor, one member representing environmental interests and one member representing ratepayers
    - one member appointed by the State Treasurer
  - c. any annual net proceeds from operations shall be used in the following manner:
    - 50% of total annual net proceeds shall be distributed to the state's consumers in the form of a cash rebate or dividend paid directly to each customer in proportion to their pro rata share of total energy produced by the hydro facilities
    - 50% of total annual net proceeds shall be retained within the corporation to use for environmental restoration/remediation/improvement of natural resources adversely affected by the hydro operations
  - d. operation of all facilities will follow the following order of priorities:
    - environmental restoration/remediation/improvement of resources affected by the hydro operations, including using net revenues for environmental restoration
    - honoring the contractual and other commitments presently in place under PG&E or SCE ownership at least during the term of such agreements
    - integrating hydropower operations with all other associated facilities for any environmental improvements, water supply increases, or other benefits that might result from integrated operation
    - minimize retail electric rates
    - meet corporation debt service obligations
  - e. The corporation may partner with counties, water districts, or others, including USGen, as appropriate with the above stated priorities for operation of the system, as determined by the corporation's board of directors
  - f. The corporation may elect to sell, with approval from the legislature and the Governor, partial or complete interest in selected facilities consistent with the system management priorities listed above. [eligible parties could include: the electric companies or their subsidiaries, rural counties, water agencies, etc.]

- g. The corporation may contract with a private operating company to operate the system (according to the priorities set forth above).
  - f. In exchange for selling the hydro system to the State corporation, the electric company would be exempt from State capital gains taxation.
  - g. The new State corporation would have "Sunset" legislation; that is, the legislation would require that the enterprise be sold to the private sector in six years unless the Legislature took affirmative steps to continue the enterprise under State ownership. Any proceeds from sale after retirement of any outstanding debt obligations would be distributed to ratepayers according to their pro rata share of consumption.
6. Financing for State acquisition would be provided through State issued revenue bonds. The bonds would be for the maximum life acceptable to the Treasurer and the financial community with a "due on sale" provision for both partial system sales and total system sales.